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U.S. Citizenship
and Immigration
Services

FILE: WAC 03 065 50179 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is wholesaler of cell phone accessories that seeks to employ the beneficiary as an international liaison/marketing manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as international liaison/marketing manager. Evidence of the beneficiary's duties includes: the Form I-129; the December 9, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: serving as the international liaison and technical translator in transactions with suppliers and customers; performing research and determining sources of products; tracking products in transit; communicating with the Hong Kong office; planning and developing marketing objectives; carrying out promotions and advertising; and assisting in developing and translating materials for the Asian market. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in business administration or marketing; have prior management, marketing, sales, and buying experience; and be fluent in the English and Chinese languages.

The director found that the proffered position was not a specialty occupation and that the beneficiary was not qualified to perform the duties of a specialty occupation. The director found that the duties of the proffered position varied broadly, and that a candidate would not require a bachelor's degree to perform the position's duties. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that a market research analyst position requires a graduate degree and that the beneficiary held an associate degree in business administration. As such, the director concluded that the beneficiary fails to qualify to perform the duties of a specialty occupation.

On appeal, counsel states that the director erred in his decision to deny the petition. Counsel states that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform its duties. Counsel avers that the submitted position announcements show that the bachelor's degree requirement is common, and that employers prefer a master's degree in the areas of business, marketing, and other related fields. Counsel emphasizes that two of the advertised positions require a master's degree in business administration, and that the beneficiary possesses a bachelor's degree in business administration. Counsel maintains that the proffered position is composed of unique duties. With respect to the beneficiary's qualifications, counsel states that the beneficiary has extensive work experience in the field, is fluent in the English and Chinese languages, and holds the equivalent of a bachelor's degree in business administration.

The AAO will first discuss whether the proffered position qualifies as a specialty occupation. Thus, the AAO will first examine the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

When determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Handbook*

regarding the education, training, and experience normally required to enter into and advance within an occupation, as the *Handbook* provides a comprehensive description of the nature of particular occupations.

The petitioner's December 9, 2002 letter and its response to the request for evidence describe the responsibilities of the proffered position. The AAO finds that a responsibility is included in the petitioner's response to the request for evidence that was not originally described in the December 9, 2002; namely, that the beneficiary will negotiate terms with vendors. The AAO will not consider this duty on appeal since it was not initially described in the petition. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The AAO finds that counsel's submitted job announcements fail to demonstrate that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position. Only one of the postings indicates that the employer requires a bachelor's degree in a specific specialty: AccuMed Inc. accepts a bachelor's degree in business or marketing. However, AccuMed Inc. also is amenable to accepting equivalent experience in marketing roles, and is dissimilar in nature from the petitioner: it is an over-the-counter pharmaceutical. Moreover, none of the postings require a master's degree in business administration because companies either prefer a master's degree in business administration or consider this degree a "plus." Thus, the evidence is insufficient to establish an industry-wide bachelor's degree requirement in a specific specialty.

Most of the beneficiary's duties correspond to the responsibilities performed by marketing and sales managers. One of the beneficiary's duties - tracking shipments through customs - is usually performed by a cargo and freight agent; obviously, the beneficiary's other duty - translation - is performed by a translator. None of these positions, according to the *Handbook*, require a bachelor's degree in a specific specialty. For example, the *Handbook* states the following with regard to training, advancement, and other qualifications for marketing and sales manager positions:

A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

Specifically, for marketing, sales, and promotion manager positions the *Handbook* provides:

[S]ome employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous.

The *Handbook* reports that employers find a wide range of educational backgrounds suitable for entry into the proffered position. Under the *Handbook*, for example, an employer may find that a person with

experience in a related occupation and an associate or bachelor's degree in any field of study suitable for a sales manager position. Although some employers prefer a bachelor's or master's degree in business administration, most do not normally require a bachelor's degree in a specialized field. Thus, according to the *Handbook*, the offered position would not qualify as a specialty occupation because employers do not require a bachelor's degree in a specific specialty.

With respect to the degree requirement, as previously stated, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Inasmuch as there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title - such as business administration - without further specification, does not establish the petitioner's requirement of bachelor's degree in a specific specialty. See *Matter of Hertz Associates*, 19 I&N Dec. 558, 560 (Reg. Comm. 1988). Here, the petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in business administration or marketing. However, the petitioner does not indicate a precise and specific course of study in business administration such as a concentration in marketing. The petitioner's requirement of a bachelor's degree in business administration is insufficient to establish a degree requirement in a specific specialty. Although the petitioner also accepts a bachelor's degree in marketing - a specific course of study - the *Handbook* reveals that the duties of the proffered position are performed by occupations that do not require a baccalaureate or higher degree or its equivalent in a specific specialty as the normal minimum requirement for entry into the proffered position. Furthermore, the submitted postings are insufficient to establish the first criterion.

Counsel claims that the submitted postings establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. As already discussed, none of the postings have probative value in establishing the second criterion.

Counsel maintains that the proffered position is composed of unique duties. Nevertheless, no evidence is in the record that would show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously mentioned, the duties of the position are performed by occupations that do not require a bachelor's degree in a specific specialty.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Neither the submitted job postings nor the information relayed in the *Handbook* offer probative value in establishing the fourth criterion. The petitioner, consequently, fails to establish the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.